

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ariana Thomas	Team: Squad #13	CCRB Case #: 202104899	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 04/23/2021 10:40 PM	Location of Incident: Mother Gaston Boulevard	18 Mo. SOL 10/23/2022	Precinct:		
Date/Time CV Reported Tue, 08/17/2021 12:09 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/17/2021 12:09 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Espinal	19909	962383	PSA 2

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SSA Ricardo Lewis	02411	936948	PSA 2
2. POM Biko Harvey	07331	960639	PSA 2

Officer(s)	Allegation	Investigator Recommendation
A.POM John Espinal	Abuse: Police Officer John Espinal stopped the vehicle in which § 87(2)(b) § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM John Espinal	Abuse: Police Officer John Espinal questioned § 87(2)(b)	
C.POM John Espinal	Abuse: Police Officer John Espinal threatened to arrest § 87(2)(b)	
D.POM John Espinal	Abuse: Police Officer John Espinal searched the vehicle in which § 87(2)(b) § 87(2)(b) and § 87(2)(b) were occupants.	
E.POM John Espinal	Abuse: Police Officer John Espinal failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		

Case Summary

On August 17, 2021, while being interviewed over the phone for CCRB case number § 87(2)(b) § 87(2)(b) filed this complaint on behalf of himself and his friends, § 87(2)(b) and § 87(2)(b).

On April 23, 2021, at approximately 10:40 p.m., § 87(2)(b) was driving in the vicinity of Mother Gaston Boulevard in Brooklyn with § 87(2)(b) and § 87(2)(b) in the car with him. Police Officer John Espinal, Police Officer Biko Harvey, and Sergeant Ricardo Lewis, all of PSA 2, stopped the car (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Espinal observed a full-sized NYPD Auxiliary police shield in the center console of the car and a mini-NYPD Auxiliary police shield in § 87(2)(b) wallet and questioned him about them (**Allegation B: Abuse of Authority**, § 87(2)(g)). PO Espinal ordered § 87(2)(b) to give him the full-sized shield and threatened to arrest him if he did not do so (**Allegation C: Abuse of Authority**, § 87(2)(g)). PO Espinal reached into the car and grabbed the shield (**Allegation D: Abuse of Authority**, § 87(2)(g)). § 87(2)(g) § 87(2)(b) asked PO Espinal for a business card, and he said he did not have one and provided § 87(2)(b) with his name, shield number, and command (**Allegation E, Abuse of Authority**, § 87(2)(g), § 87(2)(g), § 87(4-b)).

Body-worn camera (“BWC”) footage was obtained from the NYPD Legal Bureau. The footage is in IAs #70-73 (**Board Review 01- 04**) and summarized in IAs #74-75 (**Board Review 05-06**). There is no other video evidence in this case.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer John Espinal stopped the vehicle in which § 87(2)(b) § 87(2)(b) and § 87(2)(b) were occupants.

In PO Espinal’s BWC footage (**Board Review 01**), beginning at the 00:37 minute-mark timestamp of the media player (visible at the bottom of the screen), PO Espinal, who is driving a police car, activates its turret lights and parks it. At 00:55, he exits the car, and approaches the driver’s side the car § 87(2)(b) is operating. At 01:22, PO Espinal says he is stopping § 87(2)(b) because he was driving with no lights on. § 87(2)(b) says he did not know. PO Espinal orders § 87(2)(b) to produce his license, registration, and proof of insurance.

§ 87(2)(b) statement was generally consistent with the BWC footage (**Board Review 07-08**). He testified that he was driving a 2018 or 2019 grey Volkswagen Jetta rental car and did not commit any moving violations prior to the stop. Either the car’s front lights or rear lights were off, which § 87(2)(b) attributed to the car’s automatic settings not working properly. Upon the officers’ approach, PO Espinal said his lights, either front or rear, were out, and § 87(2)(b) showed PO Espinal that they were automatic.

§ 87(2)(b) statement was generally consistent with § 87(2)(b) except that he did not remember if the officers provided a reason for stopping the car (**Board Review 09**).

§ 87(2)(b) was uncooperative with the investigation (see IAs for contact attempts).

PO Espinal’s statement was consistent with the BWC footage (**Board Review 10**). He testified that after observing § 87(2)(b) driving with no front or rear lights on at nighttime, he decided to initiate the stop. He did not issue § 87(2)(b) a summons for this violation because he used his discretion.

An automobile stop is lawful when an officer has probable cause to believe that an individual has

violated the Vehicle and Traffic Law (People v. Robinson, 97 N.Y. 2d 34 (2001)) (**Board Review 11**). New York Vehicle and Traffic Law, 375, §A, requires that every motor vehicle, driven upon a highway during the period from one-half hour after sunset to one-half hour before sunrise, display at least two lighted head lamps on the front, one on each side, having light sources of equal power, and if manufactured on or after January 1, 1952, at least two lighted lamps on the rear, one on each side, which shall display a red light visible from the rear for a distance of at least one thousand feet (**Board Review 12**).

This incident occurred at approximately 10:40 p.m., well over one-half hour after sunset, and § 87(2)(b) acknowledged that his lights were off while he was driving, which is consistent with PO Espinal's testimony of his observations prior to initiating the stop. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer John Espinal questioned § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer John Espinal threatened to arrest § 87(2)(b)

§ 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer John Espinal searched the vehicle in which

§ 87(2)(b) § 87(2)(b) and § 87(2)(b) were occupants.

In PO Espinal's BWC footage (**Board Review 01**), beginning at the 01:38 minute mark of the media player timestamp (visible at the bottom of the screen), PO Espinal asks § 87(2)(b) "Whose mini shield is that?" (in § 87(2)(b) wallet, which is on his lap, there is a mini police shield). § 87(2)(b) says it is his father's. PO Espinal says, "You got a PBA card to go with that?" § 87(2)(b) says, "Not exactly a PBA card. He gave me this," and hands a card, which is not clearly captured, to PO Espinal. At 02:14, PO Espinal points towards the car and asks § 87(2)(b) "What's that you got there, that shield?" § 87(2)(b) says he switched cars. PO Espinal tells § 87(2)(b) "Turn it over. What is it?" § 87(2)(b) reaches forward towards his center console, picks up a police shield, and shows it to PO Espinal. At 02:36, PO Espinal asks, "Whose shield is that?" § 87(2)(b) says it is his father's shield. At 02:44, PO Espinal asks § 87(2)(b) if he can see the shield. § 87(2)(b) says no and that he does not feel comfortable. PO Espinal says it is property of the NYPD and asks to see it again, this time in a raised voice. § 87(2)(b) asks why. At 02:56, PO Espinal says, "You can give it to me, or I can handcuff you right now for being in possession of that." § 87(2)(b) says, "It's my father's." PO Espinal asks to see it again. § 87(2)(b) says he does not want PO Espinal to take it. At 03:05, PO Espinal says, "My man," as his camera pans towards the ground.

This next aspect of the incident is more clearly captured in PO Harvey's BWC footage (**Board Review 03**), where at the 01:07, minute mark of the media player timestamp (visible at the bottom of the screen), though PO Harvey's camera is angled down (as he types into his phone), in the top left corner of the frame, PO Espinal is captured reaching his right hand through the open driver's window and grabs the shield out of § 87(2)(b) hand.

The remainder of the footage is more clearly captured in PO Espinal's BWC footage (**Board Review 01**), where at 03:15, PO Espinal twice asks, "Why do you have your father's shield?" § 87(2)(b) says, "He had put it in my old bookbag and I had switched cars." PO Espinal interjects and says, "So he gives you his shield?" § 87(2)(b) says, "No, he didn't give me his shield. I had it in my..." PO Espinal interjects and asks for § 87(2)(b) father's name and command. § 87(2)(b) says his name is § 87(2)(b) and that he works at the 105th Precinct. PO Espinal says, "If I call him right now... and I verify his status that he is still an Auxiliary police officer... Why do you have his shield?" § 87(2)(b) says he does not take his shield. PO Espinal says, "If I call him and verify, he is going to tell me the same?" At 04:00, § 87(2)(b) says, "No, he doesn't know I have his shield. I'm pretty sure he doesn't know I have his shield." At 04:35, PO Espinal asks to see the mini shield that

§ 87(2)(b) has in his wallet. § 87(2)(b) hands it to PO Espinal who takes it and walks to the back of the car, where he looks at the mini shield and cards, which are again not clearly captured. At 05:41, PO Espinal returns to § 87(2)(b) window and asks what rank his father is. § 87(2)(b) says he is a lieutenant. PO Espinal walks to the back of the car. At 08:43, PO Espinal returns to § 87(2)(b) window and says he is going to cut him a break for driving with no lights on and hands § 87(2)(b) his belongings back. He says he is confiscating the shields and the old cards because they are the property of the NYPD and he does not know why § 87(2)(b) has them. PO Espinal says if his father is a lieutenant, there is no reason that he still has his sergeant's shield, and if he has a problem with that, he can contact the Auxiliary police headquarters. § 87(2)(b) says his father's Hyundai Elantra, which he drives, is in the shop. PO Espinal says § 87(2)(b) is not supposed to be in possession of the items, and that he is giving him a break because § 87(2)(b) said they were his father's and not his. PO Espinal tells § 87(2)(b) his name before walking back to his car.

§ 87(2)(b) statement was somewhat inconsistent with the BWC footage. He testified that in his wallet, there was an NYPD card and a full-sized NYPD shield of his father's, who is an officer in Queens. PO Espinal asked to see § 87(2)(b) wallet, and § 87(2)(b) asked him why he wanted to see it. Without responding, PO Espinal stuck his whole right hand into § 87(2)(b) car through the open window and grabbed the wallet from § 87(2)(b) left hand, which was in his lap, in a quick snatching motion. PO Espinal took the NYPD shield and card out of § 87(2)(b) wallet and handed the wallet back to him. § 87(2)(b) asked why he did that. PO Espinal said he asked for it and that § 87(2)(b) was free to go.

§ 87(2)(b) statement was generally consistent with the BWC footage.

Neither § 87(2)(b) nor § 87(2)(b) mentioned in their statements § 87(2)(b) possessing a mini shield, nor PO Espinal threatening to arrest § 87(2)(b).

PO Espinal's statement was generally consistent with the BWC footage. He testified that as § 87(2)(b) opened his wallet to retrieve his license, PO Espinal noticed a mini-NYPD Auxiliary police shield inside of it. The mini shield is one that officers can give to family members or friends along with a PBA card, as a courtesy. Shortly after he noticed the mini-shield, PO Espinal noticed a full-sized gold NYPD Auxiliary police shield in the front center console near the cupholder of § 87(2)(b) car. PO Espinal recognized the shield to be a supervisor's from its star shape and color. PO Espinal asked § 87(2)(b) "Whose is that?" referring to the mini shield and full-sized shield, to determine why § 87(2)(b) had them, and to determine if he was using either shield to impersonate an officer. PO Espinal ordered § 87(2)(b) to hand him the full-sized NYPD Auxiliary police shield and § 87(2)(b) refused to do so. PO Espinal told him he could be arrested if he did not comply because the shield is NYPD property and § 87(2)(b) was not supposed to be in possession of it, though he did not know what rule governed this. Once § 87(2)(b) told PO Espinal that his father did not know he had the shield, § 87(2)(b) could have been arrested for larceny. PO Espinal asked § 87(2)(b) why he had his father's shield and if his father would know he had his shield to determine if § 87(2)(b) was using it to impersonate an officer, for only an officer should have been in possession of it. PO Espinal did not initially recall if he ever reached into the car to retrieve the full-sized shield, though after he was presented with PO Harvey's BWC footage, he acknowledged doing so. After § 87(2)(b) refused to comply with orders to give him the NYPD Auxiliary police shield § 87(2)(b) should not have been in possession of, he reached into the car to confiscate it since it was Department property.

The common-law right of inquiry is a level of contact between officers and civilians which is activated by founded suspicion that criminality is afoot and permits a greater intrusion than a mere request for information. Officers may ask pointed questions which would lead the person to

reasonably believe that he or she is suspected of wrongdoing. New York v. Hollman, 79 N.Y. 2d 181 (1992) (**Board Review 24**).

NYPD Auxiliary Police Guide, Procedure 504-08 (**Board Review 22**), states that Auxiliary members are to adhere to all regulations listed within Department Property Agreement. The agreement is signed upon issuance of any shield by the Auxiliary Police Section (“APS”). The APS, Department Property Agreement (**Board Review 23**) states that Auxiliary shields are the property of the New York City Police Department, and are only to be used for identification purposes and do not grant any immunity or privilege.

New York Penal Law, Section 190.25 (**Board Review 14**), states that a person is guilty of criminal impersonation in the second degree (a class A misdemeanor) when he pretends to be a public servant, or wears or displays without any authority any uniform, badge, insignia or facsimile thereof by which such public servant is lawfully distinguished, or falsely expresses by his words or actions that he is a public servant or is acting with approval or authority of a public agency or department; and so acts with the intent to induce another to submit to such pretended official authority.

NYPD Patrol Guide, Procedure 212-81 (**Board Review 13**), states that upon observing the unauthorized display of a badge, and person displaying purports to be a public servant, officers can arrest the civilian for criminal impersonation in the second degree, New York State Penal Law, Section 190.25, and seize the badge as evidence.

The “automobile exception” to the warrant requirement of the Fourth Amendment permits a warrantless search of a vehicle if there is probable cause to believe that the vehicle contains evidence or contraband. People v. Galak, 81 N.Y. 2d 463 (1993) (**Board Review 15**).

PO Espinal said he first observed the mini-NYPD Auxiliary shield in § 87(2)(b) wallet, and then observed the full-sized NYPD Auxiliary shield in the car’s center console as he was speaking to § 87(2)(b). He said his observations prompted him to ask § 87(2)(b) whose shields he had to determine § 87(2)(b) purpose for possessing them, and if he was using either shield to impersonate an officer. Additionally, PO Espinal said he later asked § 87(2)(b) why he had his father’s shield, referring to the full-sized Auxiliary police shield, and if his father would know if he had it, to determine if § 87(2)(b) was using it to impersonate an officer, for only an officer should have been in possession of the shield. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

However, the BWC footage shows that at the time PO Espinal threatened to arrest § 87(2)(b) and reached into the car to grab the full-sized NYPD Auxiliary police shield from him, § 87(2)(b) had only said the shield was his father’s and had not provided any further details about his possession of it, nor was he asked to do so. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer John Espinal failed to provide § 87(2)(b) with a business card.

In PO Espinal's second BWC video (**Board Review 04**), beginning at the 00:08 minute mark of the media player timestamp (visible at the bottom of the screen), § 87(2)(b) who is standing outside of his car, approaches PO Espinal and asks if he has a card. PO Espinal says he is "Officer Espinal." At 01:10, PO Espinal walks towards his police car and § 87(2)(b) says that PO Espinal is still not providing his information. PO Espinal says he gave § 87(2)(b) time to write it down. § 87(2)(b) says he is specifically asking for his card. PO Espinal says he does not have any cards on him but is giving him the chance to write his name down now and asks if he would like to do so. § 87(2)(b) asks if PO Espinal's BWC is on and has been the whole time, and he says yes. At 01:19, PO Espinal asks § 87(2)(b) if he would like to write his information down. At 01:34, an officer [off camera] says, "We're done," and the officers get back into their car. At 01:37, as PO Espinal enters his police car he says, "Officer Espinal, PSA2, 19909." § 87(2)(b) says he asked for the card and asks how he is supposed to remember PO Espinal's name. PO Espinal begins to reverse his car and says that he gave § 87(2)(b) time to write his information down. § 87(2)(b) asks for his information again and PO Espinal provides it to him verbally. Another officer [off camera] suggests § 87(2)(b) take a photo of PO Espinal's information. § 87(2)(b) appears to begin typing into his phone and the officers drive away.

§ 87(2)(b) did not detail this aspect of the incident in his CCRB interview, but said none of the officers provided him with a business card. § 87(2)(b) testified that § 87(2)(b) asked PO Espinal for his business card several times and that PO Espinal stated his name and badge number, but said he did not have his business cards on him.

PO Espinal's statement was consistent with the BWC footage. § 87(2)(g), § 87(4-b) PO Espinal, who typically keeps approximately 10 business cards on his person, did not know at what point during his tour his supply became depleted. PO Espinal verbally provided § 87(2)(b) his name, shield, number, and command, and gave him ample opportunity to write this information down.

NYPD Administrative Guide, Procedure 304-11, requires that officers allow members of the public ample time to write down identification information if their supply of Right to Know business cards becomes depleted (**Board Review 16**).

Though PO Espinal did not provide § 87(2)(b) with a business card, for his supply had been depleted, the BWC footage corroborates his testimony that he verbally provided his name, shield number, and command, and afforded § 87(2)(b) ample opportunity to write his information down. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b)

- § 87(2)(b) [REDACTED]
- [REDACTED]
- This is the first complaint to which § 87(2)(b) and § 87(2)(b) have been a party (**Board Review 18, 25**).
- PO Espinal has been a member-of-service for five years and has been a subject in six CCRB complaints and 24 allegations, none of which were substantiated. § 87(2)(g) [REDACTED]

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of June 30, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (**Board Review 26**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
- [REDACTED]

Squad: 13

Investigator:	_____ Signature	Inv. Ariana Thomas Print Title & Name	07/12/2022 Date
Squad Leader:	_____ Signature	IM Laura Kastner Print Title & Name	07/12/2022 Date